

REMARKS

In response to the Official Action mailed March 11, 2002, Applicants amend their application and request reconsideration. No claims are added or cancelled in this Amendment, so that claims 15-20 remain pending.

In this Amendment two errors in the independent claims are corrected. An incorrect article in claim 15 is corrected and an obvious typographical error in claim 17 is corrected. There is no substantive change in either claim.

The invention concerns a method of selling prescription contact lenses. In the method, there are several parties involved. One of the parties is the physician that prescribes contact lenses. Another party is a contact lens provider, i.e., a manufacturer or the like, that distributes contact lenses. Another party is a selling agent, for example, a retailer or dispensing optometrist, that physically supplies contact lenses to the ultimate user. The other party is the customer, i.e., the ultimate user of the contact lenses. The claimed method provides a system of communication between these parties for the ultimate provision of contact lenses to the customer.

In the method described in claim 15, a physician supplies various information concerning a customer, including diagnostic data, to the contact lens provider, i.e., the manufacturer or wholesaler of contact lenses and perhaps of related articles. Essentially, a data base record is constructed with regard to the customer in which the customer is given a registration number that is related to a customer identification and the diagnostic data. This information is transferred through a communication network to the contact lens provider. In the method according to claim 15, the registration number, which identifies the customer, is supplied from the provider to the customer along with selling agent locality information related to the customer address so that the customer can find a nearby selling agent. In addition, the customer registration number and identification data as well as the diagnostic data are supplied from the contact lens provider to a selling agent through the communication network.

In the method according to claim 17, the other pending independent claim, the selling agent closest to the customer is identified to the customer by the contact lens provider, through the communication network. Then, contact lenses are delivered from the selling agent to the customer and delivery data from the selling agent is transferred back to the contact lens provider, through the communication network, to maintain records on the supplying of contact lenses.

In the dependent claims, for example, in claim 16, the contact lens provider, i.e., the manufacturer or wholesaler of contact lenses pays a service fee to the selling agent when a monthly payment is made by the customer to the provider. In dependent claim 18, a notice is provided for limited lifetime contact lenses. When the deadline for terminating use of a

particular set of contact lenses approaches, the contact lens provider notifies the customer through the communication network. Further, the contact lens provider offers, according to claim 19, a program of exchange of old and new contact lenses for a monthly fee paid by the user. Claim 20 provides for the intermediary, i.e., the contact lens provider, to periodically offer items related to the use of contact lenses directly to the customer, i.e., contact lens user.

Claims 15-17 and 20 were rejected as unpatentable over Schlueter et al. (U.S. Patent 5,974,124, hereinafter Schlueter) in view of Eggleston et al. (U.S. Patent 6,061,660, hereinafter Eggleston). This rejection is respectfully traversed.

The rejection is treated separately with respect to the two independent claims, claims 15 and 17. In spite of the different characterization of what is described by Schlueter that appears in the Official Action, the entire purpose of Schlueter is to collect, remotely, medical information and to compile medical diagnostic information at a central location based upon diagnoses made at various remote locations. Applicants do not insist that this information might not include ophthalmic data, thereby making Schlueter potentially relevant to the claimed invention. However, the relevance stops at that point. There is nothing in Schlueter about merchandizing contact lenses according to any method notwithstanding the Examiner's erroneous assertion to the contrary. Applicants agree that Schlueter describes constructing essentially a data record with regard to each patient containing various patient identifying and diagnostic information, however, the Examiner even acknowledged that this limited similarity does not come close to describing the method of claim 15. Schlueter has nothing to do with selling any goods but rather only compiling diagnostic information available only to medical practitioners. There is no supplier of equipment, such as a contact lens provider, included within the Schlueter system. Thus, Schlueter might, at most, meet the limitation of the second paragraph of claim 15 but no other paragraph of that claim, all of which relate to selling of medical goods, namely, contact lenses, through a network of wholesalers/manufacturers and retailers/dispensing optometrists.

Eggleston does not supply the parts of claim 15 that are missing from Schlueter and a careful review of the Official Action does not suggest the Examiner has taken a contrary position. Eggleston only relates to correlating information between the location of various sellers of goods and potential customers. In fact, in the context of Eggleston, those potential customers are not conventional buyers but contest winners who collect their prizes from local merchants. Thus, in the most strained sense, Eggleston might be relevant to the part of the third paragraph of claim 15 relating to providing selling agent locality data in relation to customer address data. Assuming there is that relationship and that somehow one of skill in the art would, without knowledge of the invention, modify the remote collection and assembly of medical diagnostic data with contest winners claiming prizes, the combination would still not meet all of

the limitations of claim 15 and could therefore not establish *prima facie* obviousness of that claim. The unreasonable hypothetical combination of Schlueter and Eggleston lacks any connection to the merchandizing of medical appliances in which there is direct contact between a manufacturer/wholesaler and identification of a retailer or dispensing agent dispensing the medical goods to a customer that is diagnosed by a physician whose organization built a data record for that particular customer. The rejection is too strained to be maintained.

Claim 16 was not rejected based upon any prior art but based upon Official Notice that the payment arrangement specified in that claim is known in the art. This rejection is respectfully traversed and cannot be legally maintained without the citation of published prior art or some established knowledge in the art, substantiating the questioned Official Notice. The undefined parameters of Official Notice does not supply the limitations of dependent claim 16. Moreover, without knowing what those parameters are, it is not even possible to evaluate the scope of the Official Notice and whether it could be combined with the method described by claim 15.

As previously described, the method of claim 17, the other pending independent claim, is similar in many ways to claim 15. Thus, the alleged combination of Schlueter and Eggleston fails to meet the limitations of claim 17 for the same reason that those references fail to meet the limitations of claim 15. In addition, claim 17 includes delivering contact lenses from the selling agent to the customer and transferring delivery data from the selling agent to the contact lens provider. These elements of claim 17 not appearing in claim 15 never appear anywhere in the references in the context of contact lenses or otherwise in any way that would suggest merchandizing of contact lenses and medical appliances. The rejection of claim 17 cannot be maintained for the same reason that the rejection of claim 15 cannot be maintained.

Claims 18 and 19 were rejected as unpatentable over Schlueter in view of Eggleston and further in view of Dziabo et al. (U.S. Patent 5,213,760, hereinafter Dziabo). This rejection is respectfully traversed.

Dziabo is the only reference applied in rejecting claims that has any relationship to contact lenses. Dziabo provides for determining when the period of permissible use of contact lenses is drawing to a close by providing a change in tint, through a chemical reaction or removal of an indicating tint from contact lenses. This function, while useful, has no relationship to the invention defined by claims 18 and 19.

Claim 18 is directed to delivering notification of the impending deadline of the permissible use period for contact lenses *through the communication network* from the contact lens provider to the customer. Dziabo is directed to providing on-the-spot notification of the expiration of the useful period of contact lenses, not through any communication network or merely based on the passage of time, but rather by measuring numbers of times the contact

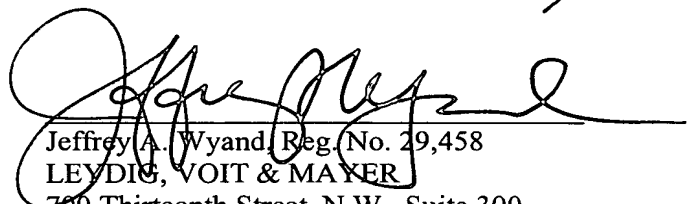
lenses are disinfected. The disinfecting treatment and the corresponding warning to the contact lens user according to Dziabo has no relationship to providing a notification based upon the passage of time. In fact, Dziabo may provide a notification of the approaching end of the lifetime of the contact lenses more accurate than the invention. Dziabo's warning is based upon actual lens use which may not correlate directly with the passage of time. Nothing in Dziabo relates at all to a communication system for selling contact lenses that would in any way provide a suggestion for modifying claim 17 with Dziabo. The relationship of Dziabo to the invention is so tenuous that it is apparent that Dziabo cannot be properly used to suggest any modification of claim 17 to produce the invention of claim 18.

Claim 19 depends from claim 18 and adds the offering of new contact lenses in exchange for old lenses and the monthly payment of a fee. According to the Examiner, this limitation is suggested by Dziabo. Nothing within Dziabo has been found that relates to such merchandizing activity. Rather, Dziabo is directed solely to chemical composition of contact lenses. Even if Dziabo somehow suggested, in combination with the other references, claim 18, Dziabo could not possibly suggest the limitation of claim 19.

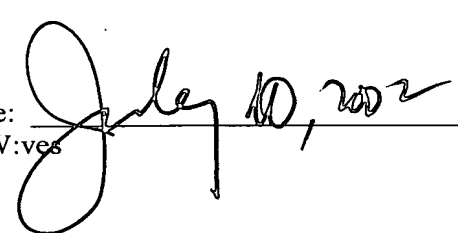
Claim 20 was rejected on the same ground that claim 17 was rejected, the claim from which claim 20 depends. Since, for the reasons already presented, claim 17 is not obvious over Schlueter in view of Eggleston, the rejection of claim 20 fails with the rejection of claim 17 and should be likewise withdrawn.

Reconsideration and withdrawal of the rejections as well as allowance of all six pending claims are earnestly solicited.

Respectfully submitted,



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